

MARINE PROTECTION, RESEARCH, AND SANCTUARIES
ACT AMENDMENTS OF 1978

MAY 15 (legislative day, APRIL 24), 1978.—Ordered to be printed

Mr. CANNON, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 2767]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2767) to amend section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 to extend the authorization for appropriations for fiscal years 1979 and 1980, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE AND SUMMARY

The first purpose of S. 2767, as reported, is to amend the Marine Protection, Research, and Sanctuaries Act of 1972 to extend the authorization for appropriations for the act's titles II and III for fiscal years 1979 and 1980. For title II, which directs the Secretary of Commerce to conduct research on ocean pollution, sums not to exceed \$7 million are authorized for fiscal year 1979, and sums not to exceed \$9 million for fiscal year 1980. For title III, which provides for the marine sanctuaries program, sums not to exceed \$2 million are authorized for fiscal year 1979, and sums not to exceed \$3 million for fiscal year 1980.

In addition, S. 2767 amends the act in other ways. Section 203 of title II, dealing with research on alternatives to ocean dumping, is repealed. The provision allowing sanctuaries to be designated for "esthetic" reasons is deleted. Section 302 of title III, dealing with the procedures for designating marine sanctuaries, is amended so that sanctuaries larger than 1,000 square nautical miles are created only if neither House of Congress disapproves. This section also is amended to require the Secretary of Commerce, when proposing a sanctuary, to

state which activities she proposes to regulate within that sanctuary. It is further amended to say that all permits, licenses, and other authorizations issued pursuant to any other authority shall be valid unless it is otherwise provided in the regulations issued to implement the terms of the designation and control the activities described in it. A new section 304 provides procedures by which the Congress is to consider sanctuary proposals sent to it.

BACKGROUND AND NEEDS

TITLE II.—OCEAN POLLUTION RESEARCH

Background

The Marine Protection, Research, and Sanctuaries Act was signed into law on October 23, 1972 (Public Law 92-532).

Title II directs the Secretary of Commerce to conduct certain research. Section 201 directs the Secretary to initiate and maintain a comprehensive research program regarding the effects of ocean dumping on the marine environment. Section 202 directs the Secretary to conduct research on the long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. Section 203 directs the Secretary to conduct and encourage research for the purpose of determining means of minimizing or ending all ocean dumping; that is, it directs the Secretary to do research on alternatives to the dumping of materials at sea. These programs are administered by the Commerce Department's National Oceanic and Atmospheric Administration.

Committee action

The need for research on the effects of ocean pollution continues. The disposal of sewage, dredged spoils, and industrial chemicals, as well as accidental spills of oil and such chemicals as kepone, all affect the marine ecosystem and have considerable potential for damaging it, its living resources, and the seafood, tourism, and recreational industries which depend upon it. The committee believes more research and monitoring are needed, and commends the executive branch for its increased attention to title II, including its recent request for the first funds for section 202 programs since passage of the act. The committee particularly supports the proposed research to better understand and predict threats to the marine ecosystem and to study the effects of selected contaminants on ocean food chain processes.

Therefore the committee supports the extension of the authorization for title II. S. 2767, as amended and reported, authorizes \$7 million for fiscal year 1979 and \$9 million for fiscal year 1980. These levels are modestly higher than the present fiscal year 1978 figure of \$6,500,000, in order to leave room for some growth in these programs.

Recently the National Ocean Pollution Research and Development and Monitoring Planning Act of 1978 (Public Law 95-273) was enacted into law. This act, largely the product of this committee's study of Federal research on ocean pollution, directs the Administrator of the National Oceanic and Atmospheric Administration to prepare and periodically update a comprehensive 5-year plan for the overall Federal effort in ocean pollution research and development and monitoring. The committee believes that future research conducted under title II of the Marine Protection, Research, and Sanctuaries Act

should be planned and conducted in line with the plan and the overall Federal program established pursuant to this new act.

Besides extending the authorization for appropriations, S. 2767, as reported, also amends title II in one other way. It repeals section 203 of the act, the provision dealing with research on alternatives to ocean dumping. Since most of these alternatives are land-based, with the exception of at sea incineration of materials, this research should not be assigned to the Secretary of Commerce. The committee urges the committees of Congress with jurisdiction over title I of this act to assign the responsibility of research on these alternatives to the Environmental Protection Agency.

TITLE III.—MARINE SANCTUARIES

Background

Title III of the Marine Protection, Research, and Sanctuaries Act provides for the designation of marine sanctuaries for the purpose of preserving or restoring certain areas of ocean and coastal waters.

The original fiscal year 1973 authorization for title III was \$10 million. Until recently, though, the executive branch never officially requested funding for the purpose of implementing this title, and during the early years of the program only two marine sanctuaries were designated. As a result, Congress lowered the authorization level for the program; the fiscal year 1978 level is \$500,000.

However, in his May 1977 environmental message the President discussed the program and said he was instructing the Secretary of Commerce, who administers title III, to identify possible marine sanctuaries and to begin collecting the data necessary to designate them as such under the law. Under the direction of Secretary, the National Oceanic and Atmospheric Administration requested public recommendations concerning candidate sites. By February 1, 1978, the agency had received 169 nominations from other Federal agencies, the States, and members of the public. The number of recommendations shows a strong interest in designating more marine sanctuaries.

Responsibility for evaluating these recommendations and for otherwise operating the program recently was assigned to NOAA's new Office of Ocean Management.

Committee action

As demands on the ocean and its resources increase, the preservation and protection of selected habitats and other ecologically important or unique marine areas becomes all the more important. For this reason the committee believes the marine sanctuaries program should be continued, and it commends the Administration for its initiatives in this field. To extend the program and to allow for the designation of new sanctuaries as well as the continued maintenance of existing ones, S. 2767 reauthorizes title III at levels of \$2 million for fiscal year 1979 and \$3 million for fiscal year 1980.

The committee does so recognizing that the purpose of the program remains the preservation, protection, and restoration of specific ecologically important marine areas. To clarify this, S. 2767 deletes the preservation of waters for their "esthetic values" as one reason for creating sanctuaries, leaving that waters may be designated for their "conservation, ecological, and recreational values." In the view of the committee, esthetic reasons alone are not sufficient for creating a sanc-

tuary and then prohibiting or strictly controlling activities within it. Moreover, while the committee feels there may be cases where sanctuaries should be created primarily for recreational reasons, it believes that most sanctuaries should be established for conservation or ecological purposes.

The renewed interest in the marine sanctuaries program also has led this committee to review two other aspects of title III. One is its relationship to Federal ocean legislation passed since 1972, particularly the Fishery Conservation and Management Act, the Marine Mammal Protection Act, and the Coastal Zone Management Act. Here the committee expects that the Secretary of Commerce will give full and careful consideration to accommodating the policies of these acts when evaluating the size and location of sanctuaries and the scope of activities to be regulated within them. To the degree that it is consistent with the purposes of sanctuaries, the Secretary generally should not override these statutes within sanctuaries.

The committee also has reviewed the procedures by which marine sanctuaries are designated. Presently, the Secretary only may designate sanctuaries after holding public hearings, consulting with other Federal officials, and gaining the approval of the President. As a result of this review, the committee has a general comment regarding the designation process, and the bill, as reported, changes this process in two ways.

The main comment is that the committee is vitally interested in the sanctuaries program and in working on it with the Secretary of Commerce. Therefore, the committee hopes that the Secretary and the responsible officials of the National Oceanic and Atmospheric Administration will consult closely with the Congress when evaluating possible sanctuary sites and when discussing which activities within them need to be regulated.

The first of S. 2767, as reported, two provisions amending the designation process specifies that each proposed designation for a marine sanctuary greater in area than 1,000 square nautical miles must be submitted to Congress. The designation becomes effective if neither House of Congress passes a resolution of disapproval within 120 legislative days. A new section 303 to the title provides procedures by which the two Houses and their committees shall handle such resolutions.

This change has been made because the decision on whether to create a very large marine sanctuary involves major policy issues with wide-ranging environmental and economic implications. It is therefore appropriate and necessary that the Congress play a formal role in making such a decision.

Under this change, marine sanctuaries 1,000 square nautical miles or less in area will continue to be designated through an administrative process. However, S. 2767, as reported, will require the Secretary to notify the Congress of his or her intention to transmit a proposed designation for this size sanctuary to the President. This notice is to be given at least 60 legislative days before the Secretary transmits such proposal to the President. The designation of this size sanctuary shall become effective if and when the President approves the proposal.

The committee intends that an executive branch proposal for a sanctuary greater in area than 1,000 square nautical miles be prepared according to the same procedures used to designate a smaller sanctuary.

That is, there will be public hearings, formal consultations with the heads of other Federal agencies, and consultations with responsible officials of affected States. The difference is in the roles of the President and the Congress. In the case of the sanctuary 1,000 square nautical miles or smaller, the President makes the final decision on whether to create the sanctuary. In the case of larger proposed sites, the President decides whether to formally propose a sanctuary and the designation becomes effective if neither House of Congress vetoes it.

As to those waters of any sanctuary which lie within the territorial waters of a State, a designation continues to become effective 60 days after Federal designation unless the Governor objects.

For the purposes of this amendment to title III, the committee intends that proposed designations adjacent to or in close proximity to each other (within 50 nautical miles of each other) be considered parts of the same proposed marine sanctuary. Thus it is inappropriate for the Secretary and the President to attempt administratively to designate at the same time one sanctuary of 1,000 square nautical miles or less and others adjacent to or within 50 nautical miles of it, if their combined area exceeds the 1,000-square-mile size. Any such proposal must be submitted to Congress. Moreover, if the Secretary and the President wish to modify an existing designation to expand a marine sanctuary so that its total size exceeds the 1,000-square-mile level, that proposed modification must be submitted to Congress.

Second, S. 2767, as reported, modifies the details of the procedure by which the Secretary and the President designate a sanctuary of formally propose a designation to Congress, as the case may be.

One Change is that in the case of all proposed sanctuaries, the Secretary shall consult with the chairman and members of any Regional Fishery Management Council which has jurisdiction over waters that would be included within a proposed sanctuary.

The other changes deals with the way the Secretary chooses which activities to propose regulating within a sanctuary.

One problem with the original title III is that in designating a sanctuary the Secretary of Commerce automatically and perhaps inadvertently may assume authority to regulate all activities within a sanctuary; all other statutes may be superseded within the designated site. While the committee believes the Secretary should have the authority necessary to regulate activities within a marine sanctuary, it also believes the Secretary should have discretion to select which activities to propose regulating under title III and which one to propose exempting from this regulation.

Therefore, S. 2767, as reported, includes a House proposal to require the Secretary, when proposing a sanctuary, to list the "terms" of the proposed designation. These "terms" include not only the geographic area to be included and the characteristics of the site which give it conservation, ecological, or recreational value, but also those specific activities which the Secretary proposes to regulate in order to protect those characteristics.

After the designation is effective, and after consultations with interested Federal and State officials, the Secretary is to issue regulations to implement the terms of the designation and to control the activities described in it. However, all permits, licenses, and other authorizations issued pursuant to any other law or other authority shall remain

valid unless these sanctuary regulations provide otherwise. That is, if the terms of the designation and the regulations implementing them do not provide for the regulation of a given activity, that activity within the sanctuary continues to be regulated under other applicable law.

If any change is proposed in the list of those activities to be regulated by the Secretary, the sanctuary must be redesignated according to the procedures by which new sanctuaries are designated. Redesignation is not required in cases where the regulations implementing the designation are changed. It is only required when the Secretary wishes to change the types of activities to be regulated. Such activities include recreation, commercial fishing, and Outer Continental Shelf oil and gas operations. If the Secretary and President decide to modify one of the two sanctuaries designated in 1975, the processes set forth in these amendments shall be used.

In amending the act this way, the committee expects that the Secretary will continue to propose regulating all those activities whose regulation is necessary to carry out the purposes of the sanctuary and this title. Again, however, the committee also wishes the Secretary to give full and careful consideration to accommodating the policies of the Fishery Conservation and Management Act, the Marine Mammal Protection Act, and the Coastal Zone Management Act within sanctuaries.

In the case of those activities within a sanctuary which the Secretary does not regulate under the terms of the designation, the committee expects the Secretary to monitor them, to advise the responsible authorities when there is danger that these activities might damage the sanctuary, and to propose modifying the designation of the sanctuary if such a threat continues. Moreover, the committee expects that the responsible authorities regulating these other activities will do so in ways to protect the sanctuary, and will periodically consult with the Secretary to ensure this.

ESTIMATED COSTS

Pursuant to section 403 of the Congressional Budget Act of 1974, the Director of the Congressional Budget Office has submitted the following cost estimate:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., May 15, 1978.

HON. HOWARD W. CANNON,
*Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2767, the Marine Protection Research and Sanctuaries Act Amendments of 1978.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ROBERT A. LEVINE,
Deputy Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2767.
2. Bill title: Marine Protection Research and Sanctuaries Act Amendments of 1978.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, May 9, 1978.
4. Bill purpose: The bill authorizes appropriations for fiscal years 1979 and 1980 for the National Oceanic and Atmospheric Administration (NOAA). There are specific authorizations for research and monitoring with respect to ocean dumping, and for development and maintenance of marine sanctuaries. In addition, the bill establishes a new procedure for approval of proposed marine sanctuaries, which includes the possibility of a one-house veto of any proposal over 1,000 square miles. This is an authorization bill requiring subsequent appropriation act.
5. Cost estimate:

| | <i>Millions</i> |
|--------------------------|-----------------|
| Fiscal year 1979: | |
| Authorization level..... | \$9.0 |
| Estimated costs..... | 6.2 |
| Fiscal year 1980: | |
| Authorization level..... | 12.0 |
| Estimated costs..... | 11.6 |
| Fiscal year 1981: | |
| Authorization level..... | 3.0 |
| Estimated costs..... | 0.2 |
| Fiscal year 1982: | |
| Authorization level..... | 0.2 |
| Estimated costs..... | 0.2 |
| Fiscal year 1983: | |
| Authorization level..... | 0.2 |
| Estimated costs..... | 0.2 |

The costs of this bill fall within budget function 300.

6. Basis of estimate: The authorization levels for fiscal years 1979 and 1980 are those stated in the bill. For the purpose of this estimate, it is assumed that the full amount of the authorization will be appropriated.

Based on information from NOAA, it is estimated that 32 percent of the section 204 authorization is for salaries and administrative expenses, and remaining 68 percent is for contractual efforts. Based on historical patterns, the salaries and administrative costs are spent at a rate of 90 percent for the first year and 10 percent for the second year, while the costs of the contractual efforts are spent at a rate of 80 percent for the first year and 20 percent for the second year. (The term of the contracts is 1 year.)

The authorization for section 304 marine sanctuaries will be used to maintain two existing sanctuaries and to establish and maintain new ones starting in 1979. Since current funding is at substantially lower levels than those authorized in the bill, obligations are projected to be only about one-fourth of the authorized amount in fiscal year 1979 as NOAA prepares to expand the program. The sanctuaries costs involve 1-year contractual agreements that normally spend at a rate of 80 percent in the first year and 20 percent in the second year.

7. Estimate comparison: None.

8. Previous CBO estimate: Estimates have been prepared for a similar bill, H.R. 10661, on May 10, 1978 (as ordered reported by the

House Committee on Science and Technology) and on May 12, 1978 (as ordered reported by the House Committee on Merchant Marine and Fisheries). Both versions of H.R. 10661 authorized amounts and specific authorizations for enforcement and surveillance activities which this bill does not contain. The estimated costs reflect these differences.

9. Estimate prepared by: Susan Cirillo.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

The bill, S. 2767, extends the authorization of appropriations for titles II and III of the Marine Protection, Research, and Sanctuaries Act of 1972 for 2 additional years. It also makes certain changes in the Secretary of Commerce's research responsibilities under title II and in the procedures by which marine sanctuaries are designated.

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee concludes that because this bill does not regulate private business activity or any other private activity, the implementation of S. 2767, as reported, will have no direct impact on the personal privacy of any individual or business. The bill does not require that any records be kept by any individual or business, nor are any reports required to be filed, or regulations required to be promulgated.

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 of S. 2767, as amended and reported, states that this act may be cited as the Marine Protection, Research, and Sanctuary Act Amendments of 1978.

Section 2

This section amends section 204 of the act to authorize for the title II ocean pollution research program \$7 million for fiscal year 1979 and \$9 million for fiscal year 1980.

Section 3

This section amends section 304 of the act to authorize for the marine sanctuaries program \$2 million for fiscal year 1979 and \$3 million for fiscal year 1980.

Section 4

Section 4 repeals section 203 of the act, which now directs the Secretary of Commerce to conduct research for the purpose of determining means of minimizing or ending ocean dumping. Section 204 of the act is redesignated section 203.

Section 5

Section 5 amends sections 301 and 302 of the act. Section 5(a) adds a new definition to section 301. The term "State," as used in this title means any of the several States or any territory or possession of the United States which popularly elects its Governor.

The rest of section 5 amends the act's section 302 procedures for designating marine sanctuaries and implementing those designations. Subsection 5(b) (1), (2), and (3) strikes out existing subsections 302 (a) and (b); redesignates subsections (c) through (e) as subsections (f) through (h), respectively; and redesignates subsection (g) as subsection (j).

Subsection 5(b) (4) then adds the following new subsections 302 (a) through (e). A new section 302(a) is added to provide that the Secretary of Commerce, after consultation with the Secretaries of State, Defense, the Interior, and Transportation, the Administrator of the Environmental Protection Agency, and the heads of other interested Federal agencies, may propose the designation of marine sanctuaries. Such proposed sanctuaries shall be those areas of (i) the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention on the Continental Shelf; (ii) of other coastal waters where the tide ebbs and flows; or (iii) of the Great Lakes and their connecting waters, which the Secretary determines necessary for the purpose of preserving or restoring such areas for their conservation, ecological, or recreational values. The consultation shall include an opportunity to review and comment on a specific proposed designation.

New subsection 302(b) establishes procedures for designating a marine sanctuary 1,000 square nautical miles or less in area. The Secretary, after consulting with other Federal officials, may transmit to the President a document of proposed designation. Also, at least 60 legislative days before so transmitting the document of proposed designation, the Secretary formally shall notify the President of the Senate and the Speaker of the House of Representatives of the intention to transmit the document to the President. The document is to include the "terms" of the designation, including the geographic area to be included within the sanctuary; the characteristics of the area which give it conservation, ecological, or recreational value; and the types of activities which the Secretary proposes to regulate within the sanctuary in order to protect those characteristics. The document notifying Congress of the proposal also shall include these terms.

The designation of a marine sanctuary 1,000 square nautical miles or less in area shall become if and when approved by the President, except for the procedures in subsection 302(d), which give Governors of affected States 60 days to decide whether they want that part of the sanctuary or the regulation of those activities, which lie within their waters.

New subsection 302(c) sets new procedures for designating a marine sanctuary greater than 1,000 square nautical miles in area. Unlike the procedure for designating smaller sanctuaries, Congress has a formal role in creating these sanctuaries. The Secretary, after consultations with other Federal officials, may transmit a document of proposed designation to the President. If the President approves of the proposal, he shall transmit the document to the Congress. The document is to include the "terms" of the proposed designation, including the geographic area to be included within the sanctuary; the characteristics which give it conservation, ecological, or recreational value; and the types of activities which the President proposes that the Secretary

regulate within the sanctuary in order to protect those characteristics. The President is to deliver the document of proposed designation to both Houses on the same day.

The designation of such a marine sanctuary greater than 1,000 square nautical miles in area shall become effective at the end of 120 legislative days of congressional session, unless within that 120-day period either House passes a resolution disapproving the designation.

Any designation of a marine sanctuary is to be printed in the Statutes at Large in the same volume as the public laws and in the Federal Register.

Subsection 302(d), formerly subsection 302(b), is amended not only to veto that part of a designated sanctuary which lies within his or her State waters, as in the present title III, but also to veto the regulation of specific activities which the Secretary proposes to regulate. Those "terms" which the Governor certifies as unacceptable will not be effective in the affected State waters until the Governor withdraws this certification of unacceptability.

This subsection is also amended to direct the Secretary, prior to proposing a marine sanctuary which includes waters lying within the area managed by a Regional Fishery Management Council, to consult with, and give due consideration to the views of, the chairman and members of the Council involved. New section 302(e) provides that the terms of the designation may be modified only by the same procedures through which an original designation of a sanctuary of its size area is made. In the case of a proposal to expand a sanctuary of 1,000 square nautical miles or less into one greater than 1,000 square nautical miles in area, the document of proposed designation for the expansion shall be submitted to Congress.

Section 5(b)(5) rewrites the present section 302(f), redesignated section 302(i) by these amendments, to direct the Secretary, after consultation with other interested Federal and State agencies, to issue necessary and reasonable regulations to implement the terms of the designation and control the activities described in it. However, all permits, licenses, and other authorizations issued pursuant to any other law or other authority shall remain valid within the sanctuary site unless such sanctuary regulations provide otherwise. That is, if the terms of the designation do not provide for the title III regulation of a given activity, within the sanctuary that activity will be subject to other relevant law and authority.

Also, the Secretary shall conduct such research, surveillance, and enforcement activities as are necessary and reasonable to carry out the purposes of title III. The Secretary may, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, either on a reimbursable or a nonreimbursable basis.

Section 5(b)(6) amends subsection 302(j), as redesignated, by striking out "(f)" and inserting in lieu thereof "(i)".

Section 6

Section 6(a) redesignates section 304 of the act, which deals with penalties, as section 305.

Section 6(b), in turn, creates a new section 304. It sets forth the procedures to be used by Congress when it is considering a Presidential

proposal to create a marine sanctuary greater than 1,000 square nautical miles in area.

The new section 303(a) provides that the rules in the remaining parts of section 303 are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, and as such are deemed a part of the rules of each House, respectively. Moreover, they are enacted with full recognition of the constitutional right of either House to change its rules.

New section 303(b) defines the term "resolution" and lays out the wording that a resolution of disapproval is to take. New section 303(c) provides that any document of proposed designation submitted to Congress and any resolution with respect to such a document is to be immediately and solely referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committee on Commerce, Science, and Transportation.

New section 303(d) sets forth procedures regarding a motion to discharge a committee from further consideration of a resolution with respect to the document of proposed designation. Such a motion is in order if the committee has not reported it at the end of 60 calendar days after its introduction. Such a motion to discharge may be made only by an individual favoring the resolution, is highly privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which is agreed to or disagreed to. The motion may not be renewed.

New section 303(e) provides that a move to proceed to the floor consideration of the resolution is highly privileged and is not debatable. An amendment to the motion is not in order, nor is a move to reconsider the vote. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided between those favoring and those opposing the resolution. A motion to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote.

New section 303(f) provides that motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution with respect to a document of proposed designation and motions to proceed to the consideration of other business, shall be decided without debate. Appeals from the decisions of the chair to the procedure relating to a resolution shall be decided without debate.

LEGISLATIVE HISTORY

S. 2767 was considered by the Committee on Commerce, Science, and Transportation on May 9, 1978. An amendment in the nature of a substitute was accepted and the bill, as amended, ordered favorably reported.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman);

[SEC. 203. The Secretary of Commerce shall conduct and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and to promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of determining means of minimizing or ending all dumping of materials within five year of the effective date of this Act.]

SEC. [204.] 203. There are authorized to be appropriated for the first fiscal year after this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out this title, but the sums appropriated for any such fiscal year may not exceed \$6,000,000. There are authorized to be appropriated not to exceed \$1,500,000 for the transition period (July 1 through September 30, 1976), not to exceed \$5,600,000 for fiscal year 1977, [and] not to exceed \$6,500,000 for fiscal year 1978, *not to exceed \$7,000,000 for fiscal year 1979, and not to exceed \$9,000,000 for fiscal year 1980.*

TITLE III—MARINE SANCTUARIES

SEC. 301. Notwithstanding the provisions of subsection (h) of section 3 of this Act, the term "Secretary", when used in this title, means Secretary of Commerce. *The term "State", as used in this title, means any of the several States or any territory or possession of the United States which popularly elects its governor.*

SEC. 302. [(a) The Secretary, after consultation with the Secretaries of State, Defense, the Interior, and Transportation, the Administrator, and the heads of other interested Federal agencies, and with the approval of the President, may designate as marine sanctuaries those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf (15 U.S.T. 74; TIAS 5578), of other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values. The consultation shall include an opportunity to review and comment on a specific proposed designation.

[(b) Prior to designating a marine sanctuary which includes waters lying within the territorial limits of any State or superjacent to the subsoil and seabed within the seaward boundary of a coastal State, as that boundary is defined in section 2 of title I of the Act of May 22, 1953 (67 Stat. 29), the Secretary shall consult with, and give due consideration to the views of, the responsible officials of the State involved. As to such waters, a designation under this section shall become effective sixty days after it is published, unless the Governor of any State involved shall, before the expiration of the sixty-day period, certify to the Secretary that the designation, or a specified portion thereof, is unacceptable to his State, in which case the designated sanctuary shall not include the area certified as unacceptable until such time as the Governor withdraws his certification of unacceptability.]

(a) *The Secretary, after consultation with the Secretaries of State, Defense, the Interior, and Transportation, the Administrator, and the heads of other interested Federal agencies, may propose the designation of marine sanctuaries. Such proposed sanctuaries shall be those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf (15 U.S.T. 74; TIAS 5578), of other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, which the Secretary determines necessary for the purpose of preserving or restoring such areas for their conservation, ecological, or recreational values. The consultation shall include an opportunity to review and comment on a specific proposed designation.*

(b) (1) *In the case of proposed marine sanctuaries 1,000 square nautical miles or less in area, the Secretary, after the consultations required by subsection (a), may transmit a document of proposed designation to the President. Also, at least 60 legislative days before so transmitting the document of proposed designation, the Secretary formally shall notify the President of the Senate and the Speaker of the House of Representatives of the intention to transmit the document to the President.*

(2) *The document of proposed designation shall include the terms of the designation, including the geographic area to be included within the sanctuary; the characteristics of the area which give it conservation, ecological, or recreational value; and the types of activities which the Secretary proposes to regulate within the sanctuary in order to protect those characteristics. The document notifying Congress of the proposal also shall include these terms.*

(3) *The designation of such a marine sanctuary 1,000 square nautical miles or less in area shall become effective if and when approved by the President, except as provided for in subsection (d) of this section.*

(c) (1) *In the case of a proposed marine sanctuary greater than 1,000 square nautical miles in area, the Secretary, after the consultations required in subsection (a) of this section, may transmit to the President a document of proposed designation. If the President approves of the proposal, he shall transmit the document to Congress. The document shall include the terms of the proposed designation, including the geographic area to be included within the sanctuary; the characteristics which give it conservation, ecological, or recreational value; and types of activities which the President proposes that the Secretary regulate within the sanctuary in order to protect those characteristics. The President shall have a document of proposed designation delivered to both Houses on the same day and to each House while it is in session.*

(2) *Except as otherwise provided under subsection (d) of this section, the designation of a marine sanctuary greater than 1,000 square nautical miles in area is effective at the end of the first period of 120 legislative days of congressional session after the date on which the document of proposed designation is transmitted to it unless, between the date of transmittal and the end of the 120-day period, either House passes a resolution stating in substance that that House does not favor the designation.*

(3) *For the purpose of paragraph (2) of this subsection, the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 120-day period.*

(4) *A designation which is effective pursuant to either subsection (b) or subsection (c) of this section shall be printed (A) in the Statutes at Large in the same volume as the public laws and (B) in the Federal Register.*

(d)(1) *Prior to proposing a marine sanctuary which includes water lying within the territorial limits of any State or superadjacent to the topsoil and seabed within the seaward boundary of a coastal State, as that boundary is defined in section 2(b) of the Submerged Lands Act (43 U.S.C. 1301(b)), the Secretary shall consult with, and give due consideration to the views of, the responsible officials of the State involved. As to such waters, a designation under this section shall become effective 60 days after it is either approved by the President, pursuant to subsection (b) of this section, or else at the end of the 120-day period not disapproved by Congress, pursuant to subsection (c) of this section, unless the Governor of any State involved shall, before the expiration of the 60-day period, certify to the Secretary that the designation, or any of its terms described in the document of proposed designation, are unacceptable to his State, in which case those terms certified as unacceptable will not be effective in the affected State waters until the Governor withdraws his certification of unacceptability. If the Governor does so certify, the Secretary may withdraw the designation.*

(2) *Furthermore, prior to proposing a marine sanctuary which includes waters lying within the area managed by a Regional Fishery Management Council created pursuant to section 302 of the Fishery Conservation and Management Act (P.L. 94-265), the Secretary shall consult with, and give due consideration to the views of, the chairman and members of the Council involved.*

(e) *The terms of the designation may be modified only by the same procedures through an original designation of a sanctuary of its area is made. In the case of a proposal to expand a sanctuary of 1,000 square nautical miles or less into one greater than 1,000 square nautical miles in area, the document of proposed designation for the expansion shall be submitted to Congress in accordance with the provisions of subsection (c) of this section.*

[(c)] (f) *When a marine sanctuary is designated, pursuant to this section, which includes an area of ocean waters outside the territorial jurisdiction of the United States, the Secretary of State shall take such actions as may be appropriate to enter into negotiations with other Governments for the purpose of arriving at necessary agreements with those Governments, in order to protect such sanctuary and to promote the purposes for which it was established.*

[(d)] (g) *The Secretary shall submit an annual report to the Congress, on or before November 1 of each year, setting forth a comprehensive review of his actions during the previous fiscal year undertaken pursuant to the authority of this section, together with appropriate recommendation for legislation considered necessary for the designation and protection of marine sanctuaries.*

[(e)] (h) Before a marine sanctuary is designated under this section, the Secretary shall hold public hearings in the coastal areas which would be most directly affected by such designation, for the purpose of receiving and giving proper consideration to the views of any interested party. Such hearings shall be held no earlier than thirty days after the publication of a public notice thereof.

[(f)] After a marine sanctuary has been designated under this section, the Secretary, after consultation with other interested Federal agencies, shall issue necessary and reasonable regulations to control any activities permitted within the designated marine sanctuary, and no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of this title and can be carried out within the regulations promulgated under this section.]

(i) (1) *The Secretary, after consultation with other interested Federal and State agencies, shall issue necessary and reasonable regulations to implement the terms of the designation and control the activities described in it, except that all permits, licenses, and other authorizations issued pursuant to any other authority shall be valid unless such regulations otherwise provide.*

(2) *The Secretary shall conduct such research, surveillance, and enforcement activities as are necessary and reasonable to carry out the purposes of this title.*

(3) *The Secretary may, whenever appropriate, utilize by agreement the personnel, services and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis in carrying out his responsibilities under this title.*

[(g)] (j) The regulations issued pursuant to subsection [(f)] (i) shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign State of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag State of the vessel, no regulation applicable to ocean waters outside the territorial jurisdiction of the United States shall be applied to a person not a citizen of the United States.

SEC. 303. * * *

SEC. 304. (a) Subsections (b) through (f) of this section are enacted by the Congress—

(1) *as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of respect to the procedure to be followed in that House in the case of resolutions described by subsection (b) of this section; and they supersede other rules only to the extent that they are inconsistent therewith; and.*

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of subsection (a) through (f) of this section, "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That, the ----- does not favor the document of proposed designation numbered ----- transmitted to Congress by the President on -----, 19 ----", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one document of proposed designation.

(c) Any document of proposed designation as described in subsection 302(c) (1) and any resolution with respect to such a document shall be immediately and solely referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committee on Commerce, Science, and Transportation.

(d) (1) If the committee to which a resolution with respect to a document of proposed designation has been referred has not reported it at the end of 60 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the document of proposed designation which has been referred to the committee.

(2) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same document of proposed designation) and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(3) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same document of proposed designation.

(e) (1) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a document of proposed designation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagree to.

(f) (1) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution with respect to

a document of proposed designation, and motions to proceed to the consideration of other business, shall be decided without debate.

(2) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a document of proposed designation shall be decided without debate.

Sec. [304.] 305. There are authorized to be appropriated not to exceed \$10,000,000 for each of the fiscal years 1973, 1974, and 1975, not to exceed \$6,200,000 for fiscal year 1976, not to exceed \$1,550,000 for the transition period (July 1 through September 30, 1976), not to exceed \$500,000 for fiscal year 1977, [and] not to exceed \$500,000 for fiscal year 1978, *not to exceed \$2,000,000 for fiscal year 1979, and not to exceed \$3,000,000 for fiscal year 1980* to carry out the provisions of this title, including the acquisition, development, and operation of marine sanctuaries designated under this title.

